

Service Date: July 22, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Public Service	)	UTILITY DIVISION
Commission's Investigation into Montana-	)	
Dakota Utilities Company's Implementation	)	DOCKET NO. D99.2.29
of Universal Systems Benefits Programs	)	
Pursuant to Section 69-8-402, MCA.	)	ORDER NO. 6143a

**ORDER TO FILE PLAN FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS**

Background

1. The 1997 Montana State Legislature passed Senate Bill 390, "Electricity Utility Industry Restructuring and Customer Choice Act," codified at Title 69, Chapter 8, Montana Code Annotated (MCA). Senate Bill 390 provided for a transition period, or phase-in, to choice of electricity supply by July 1, 2004, with a deferred compliance with the Act to July 1, 2006 for Montana-Dakota Utilities (MDU), as a single integrated, multistate utility operation not in the Columbia River basin.. § 69-8-201(3), MCA.

2. Section 69-8-201(3), MCA provided an exception to MDU's deferral for those obligations imposed under § 69-8-402, MCA. MDU has an obligation to implement universal system benefits programs (USBP). Section 69-8-402, MCA requires each Montana utility to fund its USBP at an annual level equal to 2.4 percent of the utility's 1995 retail sales revenue, beginning January 1, 1999. Utilities may recover costs associated with implementing universal system benefits programs at the required level by collecting universal system benefits charges (USBC) from their customers.

3. The Commission directed MDU in this Docket in Order No. 6143 issued February 19, 1999, Order Directing Universal System Benefits Compliance, to demonstrate how it intended to fund the USBP. The Commission informed MDU that it could file an appropriate USBC tariff for the Commission's approval, and that, on approval, the Commission would allow MDU to begin imposing this charge.

4. On March 29, 1999, MDU filed its Report with the Commission, attaching its Universal System Benefits Programs, in demonstrating how it planned to comply with the USBP requirements in § 69-8-402, MCA. Based on its 1995 revenues in Montana of \$28,100,872, MDU calculated its 2.4 percent USBP funding requirement to be \$674,400, of which MDU's qualifying industrial customers would be entitled to use \$122,660 in internal programs.

5. In its report filed on March 29, 1999, MDU addressed House Bill 337, which was about to be passed by the legislature. House Bill 337 provides that the Commission establish rates for utilities subject to its jurisdiction and cooperative boards establish the cooperatives' rates, so that these entities can collect the funds on an annualized basis in 1999. House Bill 337 establishes a process in which the Department of Revenue (DOR) must review claimed credits of the utilities and large customers. Section 6 of House Bill 337 (codified at § 69-8-413, MCA) requires the DOR to adopt rules on or before September 1, 1999, specifying USBP credits and expenditures and adopting procedures for challenged credits.

6. Section 7 of House Bill 337 (codified at § 69-8-414, MCA) requires utilities and large customers to file annual reports with DOR on March 1 of each year summarizing USBP activities and identifying claimed credits. Section 69-8-414, MCA establishes a process for review by DOR of claimed credits, which are presumed correct unless challenged by an interested person. In this review, the DOR must make a determination as to the likelihood that the challenged credit qualifies for USBP. If the credits are not likely to qualify, the DOR must formally review the challenge, but if DOR deems that the credits do qualify, DOR has the authority to dismiss the challenge with a statement of the reasons. For a formal credit review challenge, § 69-8-414, MCA spells out procedures, including notice and opportunity to comment, documentation supporting the credit claimed to the DOR and all interested persons, opportunities for responses, DOR's requests for additional information, and finally a decision from the DOR.

7. On June 23, 1999, MDU filed a Petition for Declaratory Ruling with the Department of Revenue (DOR), attaching its plan for its USBP and its proposed allocations of the USBC among the proposed programs. MDU requested an order from DOR declaring that its proposed programs qualify as USBP under § 69-8-103(31), MCA (1999) and that any money expended or costs incurred by MDU in support of the proposed USBP qualify as credits under §§ 69-8-402(2), and 69-8-414, MCA (1999). MDU also requested that the DOR issue and publish a

notice of the filing, along with a notice of opportunity for MDU's retail electric customers to file comments on the petition and any challenges to MDU's claimed credits under §§ 69-8-402(2)(b) and 69-8-414, MCA. Finally, MDU asked that DOR issue and serve upon the Commission and the Montana Consumer Counsel a notice of an opportunity to file comments on the petition, including any challenges to MDU's entitlement to claim the credits.

8. Pursuant to DOR's rulemaking authority under § 69-8-413, MCA, the DOR issued and noticed its adoption of temporary emergency rules on July 12, 1999, effective August 31, 1999, relating to Universal System Benefits Programs, implementing §§ 69-8-103, 69-8-402, 69-8-412, 69-8-414, and 69-8-501, MCA.

9. On July 19, 1999, the Commission received a letter from legal counsel on behalf of MDU agreeing to a reasonable order from the Commission directing MDU to first submit its USBP to the Commission for approval, before requesting approval of the credits from DOR in a declaratory ruling.

10. At its work session on July 20, 1999, the Commission acted to issue this order to MDU to file its proposal for USBP with the Commission for final determinations on MDU's USBP and USBC, before MDU obtains a decision from the DOR on the petition for declaratory relief on the credits for the USBP.

#### Analysis and Discussion

11. MDU is subject to Commission jurisdiction over its programs and charges. The Commission is the agency charged with regulating the rates and services of public utilities as provided in Title 69, Chapter 3, MCA. The Commission also has the authority under Title 69, Chapter 8, MCA over public utilities' transitions to customer choice of electricity supply. Except for the USBC part of the transition plan, MDU has a legislated deferral to comply with Title 69, Chapter 8, MCA. MDU as a public utility regulated by the Commission has not been relieved of its obligations as a regulated public utility, including submitting to the Commission authority over its universal system benefits programs and charges.

12. Separate from the requirement that electric utilities restructure and move to choice, § 69-8-402(1), MCA establishes Universal System Benefits Programs (USBP) to ensure continued funding and new expenditures for public purpose programs for conservation, low-income weatherization, renewable projects, research and development programs related to conservation and renewables, market transformation and low-income energy assistance. The

recovery of the costs for these programs is authorized through imposition of a Universal System Benefits Charge (USBC) assessed at the meter for each utility customer. ( . 69-8-402(2)(a), MCA.)

13. The Commission sets rates and charges under Title 69, Chapter 8, MCA (1997) and as amended in 1999. The Commission sets the rates and charges to be imposed by public utilities subject to its jurisdiction. For those electric utilities restructuring now, Title 69, Chapter 8, MCA requires the Commission to set the USBC in the process of approving a utility's transition plan and anticipates the possibility of an increase above the rate moratorium for the USBC. (See . . 69-8-211(7) and 69-8-409(1), MCA.) Electric bills, in accordance with Commission rulemaking, must disclose the USBC, along with distribution, transmission, electricity supply and competitive transition charges. Although the Commission's authority to set the USBC was implicit, House Bill 337 (1999) clarified that the Commission must establish the USBC for each utility subject to its jurisdiction. (§ 69-8-402(2), MCA.) This requirement is independent of the requirements for a restructuring utility.

14. MDU requested a declaratory order from the DOR preapproving its programs and costs. MDU submitted its Universal System Benefits Plan to the DOR as Appendix 2 to its Petition for Declaratory Ruling, with the proposed programs to be funded through the USBC. MDU requested that the DOR issue an order qualifying the programs as universal system benefit programs, as defined in . 69-8-103(31), MCA (1999). MDU also requested that DOR predetermine that any money expended or costs incurred by MDU in support of the programs described in its plan will qualify as credits under §§ 69-8-402(2) and 69-8-414, MCA (1999). In addition, MDU requested that the DOR issue and publish a notice of the filing of the petition, along with notice of opportunity for MDU's retail electric customers to file comments or challenge MDU's entitlement to the credits under §§ 69-8-402(2)(b) and 69-8-414, MCA (1999). Finally, MDU asked the DOR to issue and serve notice on the Commission and the Montana Consumer Counsel of an opportunity to file comments on its petition for a declaratory ruling, including MDU's entitlement to claim credits.

15. The Commission first sets rates, after determining proper funding levels and allocations; the DOR then reviews and approves credits, subject to a challenge process. Before the DOR can determine whether the utility's internal programs and expenditures qualify for credits, the Commission must first approve the USBPs, determine the allocations of funds to the

various programs, and establish the USBC to collect the amount of funding necessary to implement the USBPs. Title 69, Chapter 8, MCA, as amended by House Bill 337, does not authorize DOR to approve the rates, services and programs that are subject to the Commission's authority. It appears that § 69-8-414, MCA (1999) (Section 7 of House Bill 337) requires the DOR to review claimed credits, once expended, and to establish procedures for notice and challenge of claimed credits for a utility's internal programs or activities that qualify for credits. (§§ 69-8-402(2) and 69-8-414, MCA.) However, it is the prerogative of the DOR to interpret and implement the requirements imposed on the DOR by Title 69, Chapter 8, MCA.

#### Decision

16. As directed in this Order, MDU must apply to the PSC for approval of its programs and an allocation of its funds among the programs. The Commission will then determine the appropriate USBC to impose on MDU's customers to collect the amount of these funds.

17. MDU has the obligation under § 69-8-402(8), MCA (1997) to file an annual summary report on March 1 of each year with the Commission and the Transition Advisory Committee, and now with DOR as amended by House Bill 337 (1999). For those internal programs that MDU believes would qualify as credits, there appears to be a simplified process of claiming and challenging credits, once the expenditures are made and costs incurred, with a limited number of interested persons who may challenge the credits. If there is any positive difference between the claimed credits and the annual funding requirement, then the DOR must establish one or two state funds for these programs, to be administered by the Department of Environmental Quality and/or the Department of Public Health and Human Services.

#### Conclusions of Law

1. The Commission supervises public utilities and regulates the rates, charges and services of public utilities pursuant to Title 69, Chapter 3, MCA. § 69-3-102, MCA.

2. The Commission has the general power to do all things necessary and convenient in the exercise of its powers conferred by Title 69, Chapter 3, MCA and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before the Commission. § 69-3-103, MCA.

3. A public utility must file all rates, tolls and charges with the Commission for its approval in compliance with § 69-3-301, MCA.

4. The Commission may on its own motion investigate rates, tolls, charges, practices and services and, following the opportunity for a hearing, may order just and reasonable changes. § 69-3-324, MCA.

5. In 1997, the Montana Legislature passed Senate Bill 390, "Electricity Utility Industry Restructuring and Customer Choice Act," codified at Title 69, Chapter 8, MCA. Senate Bill 390 provides for transition from full regulation of vertically integrated public utilities to deregulation of electricity supply so that customers can choose their suppliers in a competitive market. The Commission will continue to regulate distribution and transmission charges of the public utilities pursuant to its authority in Title 69. § 69-8-403, MCA.

6. Montana-Dakota Utilities is a public utility subject to the Commission's jurisdiction in Title 69, Chapters 3 and 8, MCA. §§ 69-3-101 and 69-8-103(17), MCA.

7. Pursuant to Senate Bill 390, the 1997 Legislature established universal system benefits programs "to ensure *continued funding of and new expenditures for* energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future." § 69-8-402(1), MCA. (Italics supplied.) The Legislature established the funding level for these programs at 2.4 percent of "each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995," to remain in effect until July 1, 2003. § 69-8-402(2), MCA. As part of the transition of the regulated electric utility industry to competition of electricity supply, the legislature instituted these programs to be funded at this level beginning January 1, 1999, to be recovered through a universal systems benefits charge (denominated USBC) assessed at the meter for each local utility customer. § 69-8-402(2)(a), MCA.

8. MDU, a public utility subject to the Commission's jurisdiction, must obtain an order from the Commission approving its USBP. At the same time, the Commission may approve a USBC tariff to fund the USBP by allowing recovery of an amount equivalent to 2.4 percent of its annual revenues for the year ending December 31, 1995.

#### ORDER

The Commission directs MDU to submit its Universal System Benefits Program for the Commission's approval and its proposed Universal System Benefits Charge(s) to recover the costs of these programs, as outlined in this Order. Interested parties will have the opportunity for a public hearing.

DONE AND DATED this 19th day of July, 1999 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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GARY FELAND, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.